

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:15-CV-85-FL

This matter is before the court on the memorandum and recommendation (“M&R”) of Magistrate Judge James E. Gates, pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), wherein it is recommended that the court dismiss plaintiff’s complaint on frivolity review under 28 U.S.C. § 1915(e)(2)(B). Plaintiff did not object to the M&R. The magistrate judge determined that plaintiff’s action claiming malicious prosecution by the state of North Carolina failed as a matter of law on the basis of Heck v. Humphrey, 512 U.S. 477 (1994), Dist. of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983), where plaintiff did not secure dismissal of the underlying state court criminal action, and on the basis of immunity. Upon careful review of the M&R and the record generally, finding no error in this determination, the court ADOPTS the findings and recommendations of the magistrate judge. Plaintiff’s complaint is DISMISSED with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B). The clerk is directed to close this case.

SO ORDERED, this the 26th day of October, 2015.

John W. Flanagan

LOUISE W. FLANAGAN
United States District Judge